

DATE: February 20, 2006

TO: Natural Resources Board

FROM: Scott Hassett

SUBJECT: Reconsideration of adoption of Board Order WM-29-05, revisions to NR 10 pertaining to deer hunting season and regulations.

Background

On Monday, January 23, 2006, the Senate Committee on Natural Resources and Transportation and the Assembly Committee on Natural Resources held a joint public hearing on Clearinghouse Rule 05-086 (the 2006 deer season rule package or WM-29-05). This rule package including the two-year moratorium on the October gun hunt to be replaced with a statewide December gun hunt was approved unanimously by the NRB on December 8, 2005. After several hours of testimony, the Senate Committee held an executive session. A motion to request modifications was made and passed. The Board was briefed on the situation on Wednesday, January 25, 2006 and scheduled a conference call for January 31, 2006.

On Tuesday, January 31, 2006, the Board adopted modifications to CR 05-086 in a good faith effort to restore the work of the state's hunting groups for the 2006 deer hunting season. These modifications were in response to requests from the legislative committees.

On February 8, 2006, the Assembly Committee on Natural Resources requested the Department of Natural Resources again consider the same modifications to CR No. 05-086 to which the Board had already responded on January 31.

On February 10, 2006, the Natural Resources Board declined to make any further modifications or take any further action on the proposed rule. Consequently, the Assembly and Senate Natural Resources Committees objected to portions of the NRB adopted rule on February 15, 2006. Their objections have been forwarded to the Joint Committee on Review of Administrative Rules where action must be taken to uphold, or not uphold the objection within 30 days, or request further modifications.

Legislative objections to DNR rule

The following is the motion passed by both the Assembly and Senate Committees:

Moved, that the Assembly Committee on Natural Resources takes the following actions with respect to Clearinghouse Rule 05-086, relating to deer hunting season and permit issuance regulation changes:

- Rescinds the motion requesting the Department of Natural Resources to consider modifications to the rule that the committee adopted on February 8, 2006; and
- Objects to the following parts of the rule, (as shown in the modified version of the rule received by the committee on February 1, 2006) pursuant to s. 227.19 (4) (d) 6., Stats., on the grounds that these portions of the proposed rule are arbitrary and capricious, and impose an undue hardship.
 - “, that meet the criteria established in par. (ed) 2” in proposed s. NR 10.01 (3) (e) 1. d., in the left-hand column that lists the kind of animal and locality.
 - “second” in proposed s. NR 10.01 (3) (e) 1. d., in the middle column that lists open seasons.

NOTE: For purposes of clarity, the language of the proposed rule that is objected to in this motion is shown with a strike-through below:

Kind of animal and locality	Open season (all dates inclusive)	Limit
NR 10.01 (3) (e) 1. d. All deer management units located in the December herd control zone identified in s. NR 10.28 (1) not otherwise listed in subds. 2. to 6., or in CWD zones described in s. NR 10.28 (3), that meet the criteria established in par. (ed) 2.	4-day firearm season beginning the second Thursday following the Thanksgiving holiday.	One antlerless deer per antlerless deer permit issued under s. NR 10.104

Implications of the objection

If approved by the Board, the above objection would result in the December gun hunt in northern Wisconsin beginning on the Thursday immediately following Thanksgiving and running for four days. All other deer season structure and tagging changes would be in place as the Board previously approved.

The above objections constitute a change to administrative rule which requires Board approval to be implemented.

Options for Board response

Option 1: No action. The Board could decide to postpone filing the rule proposal until legislative review is complete. The result would be no changes to the deer season for 2006. The season structure and dates, and tagging options would remain unchanged from those that were in place for 2005.

Department analysis

As a result of action by the Senate and Assembly committees, the rule package now goes to the Joint Committee on Review of Administrative Rules (JCRAR). JCRAR's review must occur within 30 working days after they receive the rule. JCRAR can uphold the standing committees' objections, not uphold the standing committees' objections, or they can request further modifications. Awaiting the completion of JCRAR's review will delay implementation of any changes approved until 2007 at the earliest and in all likelihood they will uphold the objections of the legislative committees.

The Department's analysis of moving the December herd control hunt a week earlier north of Highway 8 has not changed. The legislative objection results in starting the 4-day antlerless gun hunt 3 days after the close of the 9-day regular gun season. History indicates that this is simply too close to the traditional 9-day season and the antlerless deer harvest will be reduced through decreased hunter participation which could lead to more frequent need for earn-a-buck regulations.

In 1990 and 1991, DNR extended the 9-day gun season by 7 days in an attempt to increase antlerless deer kill. In 2000 there was a 4-day gun hunt north of Highway 8 in the second week of December. In 2000, at least 30% more antlerless deer were harvested in 4 days compared to 7 additional days in 1990 and 1991. We believe that was in large part due to the 2 week separation between the two seasons.

Further, the 10-day muzzle loading season begins the day after the close of the regular 9-day hunt and the December hunt as approved by the legislature would overlap with that hunt. This presents two issues of concern. First, throughout the development of this rule, muzzle loading hunters understood that no changes were being proposed for that season. They have worked for years to develop a separate hunting period outside of the traditional gun deer hunts. The lateness of this change leaves little opportunity for adequate considerations of muzzle loading hunter input. Second, overlapping the two seasons would create law enforcement concerns and hunter confusion because hunters in the muzzle loading season can harvest a

buck if they have a regular gun deer tag. The 4-day antlerless only herd control season would put rifle hunters (with authorization for antlerless deer only) in the field at the same time as muzzle loading hunters who could legally harvest a buck.

The benefit of postponing filing the rule is that the Department and Board would remain steadfast in support of the entire package being in place as it was approved on January 31, 2006. There was no biological justification for the changes the legislature made on February 15. Proper deer herd management is a critical issue for the Natural Resource Board and the Department. There must be acceptable herd control expectancy in any compromise the Board endorses.

The Department's goal is science based management of the deer herd while being responsive to customer needs and desires. The legislatively approved package does not meet that goal. First, herd control in northern Wisconsin will be compromised beyond the level with which our deer experts are comfortable. Herd control and season structure recommendations are best made by experts from a biological perspective. Second, stakeholder groups, contrary to some expectations, *unanimously* endorsed this option, over Option 2, (Appendix A) in a conference call on February 20, 2006 (with the exception of the Wisconsin Bear Hunters Assn. which abstained).

Option 2: The Board could choose to file the rule as approved by the legislature with the objections in place. This would result in the rule being submitted to the Revisor's office immediately and effective by May 1 (give or take). All changes in the approved package would be in effect for the 2006 season and the December antlerless only gun hunt would take begin the Thursday immediately following Thanksgiving in Deer Management Units north of Highway 8. However, the Department would have to delay the start of license sales by 10 days (until March 20, 2006) to implement the changes.

Department Analysis

The Department feels that this option is not biologically sound deer management. Herd control options in northern Wisconsin are likely not sufficient under the package as approved (see explanation under Option 1, above).

There are three other complications with this change. First, the rule package approved by the legislature limits bow hunters to only antlerless deer during the 4 days beginning the second Thursday after Thanksgiving (when our herd control season was scheduled), while they would be allowed to harvest bucks during the 4 days (beginning the first Thursday following the Thanksgiving holiday) of the legislatively approved antlerless only gun season north of Highway 8. Second, the 4-day antlerless only gun deer hunt would begin on the second Thursday following Thanksgiving in Deer Management Unit 1M (located around Superior). This would be different than the antlerless only gun hunt in surrounding areas which would occur a week earlier. Third, the 10-day muzzle loading season begins the day after the close of the regular 9-day hunt and the December hunt as approved by the legislature would overlap with that hunt. Essentially, this would create an antlerless only gun deer season within an either sex gun deer season.

Option 3: The Board could direct the Department to withdraw the rule. The effect of withdrawing the rule would be that there would be no changes to deer hunting seasons in 2006 and the rule package would no longer be open for consideration. Any changes to deer season structures and/or tagging options would have to start from scratch with a new rule proposal.

Department Analysis

The analysis of option 3 is similar to option 1, however, this action would require the promulgation of a new rule for any changes already approved in this package.

Option 4: The department, under the authority of s. 227.19(4)(e), Stats. may, upon approval of an administrative rule by the legislature, advance *any* portion of the approved rule for promulgation that was not objected to. The department has reviewed Clearinghouse Rule 05-086 to determine if non-controversial aspects of the rule, such as tagging simplification, Hunter's Choice elimination and the two day youth hunt, could be implemented. The department also investigated the option of promulgating the rule without the 4-day antlerless December gun hunt occurring during the 10-day muzzleloader hunt. While it is within the department and the Natural Resources Board authority to do so, the department has determined that this is not a viable option. Without the ability to also draft new rule language (which would require new hearings and legislative review) the department is not able, through omissions alone, to craft a rule to accomplish the aforementioned goals, or to do so without sacrificing deer herd control in northern Wisconsin. The primary reason that this is so difficult, is that from the

beginning of this process the rule was viewed as a package to be implemented intact. Neither the department nor the groups involved ever viewed this as anything but an all or nothing rule package. Rather, the department recommends that if the recommended course of action is to not promulgate or file any portion of the attached rule, that a separate rule process be initiated to implement those non-controversial aspects of the rule.

When reviewing the rule the specific problems the department uncovered included:

- ❖ s. NR 10.01(3)(ez) is the paragraph in code that establishes the current Zone T season framework. This section still exists in administrative code. To make this section of code dormant for the time period while the trial was in place this section was sunset by s. NR 10.01(3)(ed)5. Further, subdivision 5. only sunsets paragraph (ez) when there is a statewide December season in effect. Therefore, if we were to remove the portion of the rule that establishes a December 4-day antlerless hunt north of Hwy. 8, paragraph (ez) would not be sunset and Oct. Zone T hunting as it existed at the end of October in previous years would again be in play statewide. It is all or nothing, we cannot implement paragraph (ez) in the north (Zone T Oct. 4-day north of Hwy. 8) and implement paragraph (ed) in the south (Herd Control Units and no October hunt for two years in the south).
- ❖ Without the ability to draft new rule language the department is not able to rectify the complexities created enforcement wise by the legislative objection, which moves the 4-day antlerless gun season over the 10-day either-sex muzzleloader season.
- ❖ While the youth hunt is a popular option, if the department were to implement only the youth hunt and no other parts of the rule, this would result in two weekends in October that would be open to gun deer hunting as the existing Oct. Zone T code would still be in effect.
- ❖ Tagging simplification was viewed as a valuable component of this rule order, however, a moratorium on October hunting and an alternative herd control framework were equal motivations behind this package. CR 05-086 was primarily composed of repealing and recreating sections of code. Therefore, to select through omissions words or phrases that would simplify tagging for archery, firearm and muzzleloader is not probable or practical. The opportunity for errors and the need for follow-up rules would be very likely. Simplification is important to hunters and the department, but simplification is better achieved through a complete rule than a composite rule where even more complexity could be the result.

Recommendation

The Department's and stakeholders' intent from the outset of this process was to maintain adequate herd control and find a season structure that was acceptable to a wide array of interests. The Department believes the package the Board approved on January 31, 2006 did that. Stakeholders, agency staff and the legislature have a large investment in developing this rule package and the standing committees have approved all aspects in this package with the exception of the timing of the December hunt north of Highway 8. The stakeholder groups, on February 20, 2006, unanimously endorsed Option 1. The Department recommends Option 1. Option 1 requires that the Board direct the agency to not file the rule until the legislative review of the rule package is complete.

Future steps in this process will involve review by JCRAR and they may uphold the previous objection to the timing of the December gun hunt. That means JCRAR may introduce a bill that would prohibit a December gun hunt during the time frame the Board, the Department and stakeholders consider most appropriate. Introduction of this bill will suspend the implementation of this rule until the legislature disposed of the bill via either passing it and sending it to the Governor, or at the end of the 2007-8 Legislative Session. The result would be that implementation of the changes in this rule package will be delayed for at least two years.

If JCRAR does not uphold the objection of the standing committees, the rule package as approved by the Board can be filed and implemented for the 2007 season.